

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS - EL PASO DIV.

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UNITED STATES OF AMERICA, :
: 3:13-cr-00370-3
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— versus — :
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MARCO DELGADO, :
Defendant. :
===== :

**MOTION TO STAY RECEIVER'S EXECUTION OF SALE OF PROPERTY
PENDING RESOLUTION OF DIRECT APPEAL AND MOTION FOR NEW TRIAL**

Comes now Defendant MARCO ANTONIO DELGADO, ("Delgado"), by and through his counsel of record, Bernard V. Kleinman, Esq., an attorney duly admitted to practice before the Bar of this Court, and respectfully moves this Court for an Order staying the receiver's execution of the sale of property pending resolution of the motion for new trial and direct appeal in this matter.

In support thereof Delgado provides as follows:

1. On January 22, 2014, Delgado was indicted in a superseding indictment with three counts of wire fraud (18 U.S.C. § 1343), and seven counts of money laundering (18 U.S.C. § 1956(a)(2)(B)(i)).
2. Relevant to this motion, the indictment contained two provisions for forfeiture, pursuant to 18 U.S.C. §§ 981, 982.¹

¹ The indictment contained a forfeiture allegation for the following property:

- a. a sum of money in United States currency representing the amount of proceeds obtained as a result of the offenses set forth in Counts One, Two, and Three;
- b. approximately \$2,589,889 in funds on deposit in the First Caribbean International Bank Account, number 10286872, and any and all property traceable thereto;
- c. real property and appurtenances located at 1109 Cerrito Feliz Lane, El Paso, Texas, 79912, with all improvements and attachments thereon, and any and all property traceable thereto; and

3. Final judgment against Delgado was entered on September 29, 2017. The Government did not perfect their claim of lien until June 28, 2018, and did not move to foreclose on the residence until April 26, 2019. (D/E 361).

4. On June 12, 2019, this Court issued a final judgment of forfeiture against Delgado, initiating the sale of Delgado's residence pursuant to 28 U.S.C. § 2001² and initiating the appointment of a receiver 18 U.S.C. §§ 3613, 3664(m)(1)(A) and 26 U.S.C. § 7403. (D/E 369). Delgado has filed an appeal on that order. (D/E 371).

5. In the interim on June 18, 2019, the Court issued an order granting Delgado until September 20, 2019, to file his motion for new trial pursuant to Fed. R. Crim. P. 33(b)(1). This order was premised on the Fifth Circuit's remand staying Delgado's direct appeal. (D/E 359).

6. While the Rule 33 may well affect the sale of the residence, on August 16, 2019, nevertheless, the Court-appointed a receiver for the sale of the property. (D/E 376, 377).

7. Delgado is requesting that any action by the receiver stayed pending the outcome of Rule 33 related pleadings and the direct appeal of this case.

8. The Government will not be prejudiced as they waited 19 months in seeking to foreclose on the lien and they cannot claim that selling the property now, versus after the Rule 33 and direct appeal are addressed, that the property will be spoiled or otherwise rendered of lesser value if the Court grants this stay.

d. all furniture, furnishings, and other properties located at 1109 Cerrito Feliz Lane, El Paso, Texas, that were purchased by Marco Delgado at Charlotte's Fine Furnishings, using funds from the First Caribbean International Bank Account, number 10286872.

² The Government had previously sought seizure of the denominated assets "b" thru "d" in prior proceedings. (D/E 265, 267).

9. On August 27th, 2019, at 8:29 a.m., EST, I emailed Assistant U.S. Attorney Arreola as to the Government's position on this Motion.

10. As of the date and time of filing of this Motion, no response has been received.

Wherefore, Marco Antonio Delgado respectfully prays this Court will grant a stay on any sale of the property until after the resolution of the Rule 33 and the direct appeal in this matter.

Dated: August 26, 2019
Somers, NY

Respectfully submitted,

/s/ Bernard V. Kleinman
Bernard V. Kleinman, Esq.
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CERTIFICATE OF SERVICE

I am Bernard V. Kleinman, Esq., attorney of record for Defendant MARCO DELGADO, and I do solemnly affirm under the laws against perjury of the United States, that I did serve the within Motion, and related pleadings, on Anna Arreola, Esq., Assistant U.S. Attorney for the Western District of Texas, attorney of record for the United States, by electronically filing through this Courts ECF filing system, on the 26th day of August 2019.

Dated: August 26, 2019
Somers, NY

/s/ Bernard V. Kleinman
Bernard V. Kleinman, Esq.